

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF MICHIGAN**

4 **DONNA WINCHESTER,**                                   )

5                                   Plaintiff,                                   )

6                                   v.                                   )

Case No.:

7 **BLUESTEM BRANDS INC. d/b/a**                                   )  
8 **FINGERHUT,**                                   )

**Jury Trial Demanded**

9                                   Defendant.                                   )  
10 \_\_\_\_\_

11                                   **COMPLAINT**

12                   DONNA WINCHESTER (“Plaintiff”), by and through her attorneys,  
13  
14 KIMMEL & SILVERMAN, P.C., alleges the following against BLUESTEM  
15 BRANDS INC. d/b/a FINGERHUT (“Defendant”):

16                                   **INTRODUCTION**

17                   1.     Plaintiff’s Complaint is based on the Telephone Consumer Protection  
18 Act (“TCPA”), 47 U.S.C. §227 *et seq.* (“TCPA,”).  
19

20                                   **JURISDICTION AND VENUE**

21                   2.     Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
22 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
23

24                   3.     Defendant conducts business in the State of Michigan and as such,  
25 personal jurisdiction is established.



1           14. When contacting Plaintiff on her cellular telephone, Defendant used  
2 an automatic telephone dialing system and automatic and/or pre-recorded  
3 messages.  
4

5           15. Plaintiff knew Defendant was utilizing an automatic telephone dialing  
6 system as each call began with a noticeable delay or pause prior to a representative  
7 speaking with Plaintiff.  
8

9           16. Defendant's telephone calls were not made for "emergency purposes"  
10 as Defendant called in regards to a collection of a debt.

11           17. Desiring to stop these repeated and unwanted calls, Plaintiff requested  
12 that these calls stop immediately in October 2015 shortly after the calls began.  
13

14           18. However, Defendant failed to restrict its calls to Plaintiff's cellular  
15 telephone number and continued to call Plaintiff.

16           19. Once Defendant knew its calls were unwanted any further calls served  
17 no lawful purpose.  
18

19  
20                                   **COUNT I**  
21                                   **DEFENDANT VIOLATED THE**  
22                                   **TELEPHONE CONSUMER PROTECTION ACT**

23           20. Plaintiff incorporates the forgoing paragraphs as though the same  
24 were set forth at length herein.  
25

1           21. Defendant initiated multiple automated telephone calls to Plaintiff's  
2 cellular telephone using a prerecorded voice.

3           22. Defendant initiated these automated calls to Plaintiff using an  
4 automatic telephone dialing system.

5           23. Defendant's calls to Plaintiff were not made for emergency purposes.

6           24. Defendant's calls to Plaintiff after she revoked consent in October  
7 2015 were not made with Plaintiff's prior express consent.  
8

9           25. Defendant's acts as described above were done with malicious,  
10 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
11 under the law and with the purpose of harassing Plaintiff.  
12

13           26. The acts and/or omissions of Defendant were done unfairly,  
14 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
15 lawful right, legal defense, legal justification or legal excuse.  
16

17           27. As a result of the above violations of the TCPA, Plaintiff has suffered  
18 the losses and damages as set forth above entitling Plaintiff to an award of  
19 statutory, actual and trebles damages.  
20  
21  
22  
23  
24  
25

1 WHEREFORE, Plaintiff, DONNA WINCHESTER, respectfully prays for  
2 judgment as follows:

- 3 a. All actual damages suffered pursuant to 47 U.S.C.  
4 §227(b)(3)(A);  
5  
6 b. Statutory damages of \$500.00 per violative telephone call  
7 pursuant to 47 U.S.C. §227(b)(3)(B);  
8  
9 c. Treble damages of \$1,500 per violative telephone call pursuant  
10 to 47 U.S.C. §227(b)(3);  
11  
12 d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3); and  
13  
14 e. Any other relief deemed appropriate by this Honorable Court

15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, DONNA WINCHESTER, demands  
17 a jury trial in this case.  
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23  
24  
25

RESPECTFULLY SUBMITTED,

DATED: June 16, 2017

KIMMEL & SILVERMAN, P.C.

By: /s/ Amy L. Bennecoff Ginsburg

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